

Introduced by Senator Speier

February 17, 2005

An act to add Article 2.2 (commencing with Section 10133.92) to Chapter 1 of Part 2 of Division 2 of the Insurance Code, relating to structured settlements.

LEGISLATIVE COUNSEL'S DIGEST

SB 410, as introduced, Speier. Structured settlements.

Existing law generally regulates insurance, including the transfer of structured settlement payment rights.

This bill would specify the rights of a consumer under a structured settlement, as defined. The bill would impose various requirements on producers who sell, solicit, and negotiate structured settlements, and would provide for the protection of structured settlement funds from other claimants.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2.2 (commencing with Section
2 10133.92) is added to Chapter 1 of Part 2 of Division 2 of the
3 Insurance Code, to read:

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5 Article 2.2. Structured Settlement Agreements

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7 10133.92. For the purposes of this article, the following terms
8 have the following meanings:

9 (a) "Structured settlement" has the meaning given that term in
10 Section 5891(c)(1) of Title 26 of the United States Code.

1 (b) “Consumer” means the person who serves as the
2 measuring life for an annuity purchased to fund the periodic
3 payments of a structured settlement.

4 (c) “Qualified assignment” has the meaning given to that term
5 in Section 130(c) of Title 26 of the United States Code.

6 (d) “Designated settlement fund” has the meaning given to
7 that term in Section 468B(d)(2) of Title 26 of the United States
8 Code.

9 (e) “Qualified settlement fund” has the meaning given to it in
10 Section 1.468B-1 of Title 26 of the Code of Federal Regulations.

11 10133.93. (a) In any structured settlement, the consumer shall
12 have all rights to the annuity or other contract that is purchased to
13 fund the periodic payments of the structured settlement,
14 regardless of the actual or constructive ownership of the annuity.
15 The consumer’s rights to the annuity or other contract shall
16 include the right to have the commission paid for the annuity or
17 contract directed as payment for consulting services benefitting
18 the consumer.

19 (b) If the consumer agrees to allow the person who is a party
20 to the suit, agreement, or workers’ compensation claim giving
21 rise to the structured settlement to make a qualified assignment,
22 of any periodic payment liability, the consumer shall have the
23 right to select, without restrictions, the life insurance company to
24 issue the annuity or other contract, the assignee related to the
25 annuity issuer, and the insurance producer who will receive the
26 commissions for its sale, solicitation, and negotiation.

27 10133.94. The following provisions apply to the insurance
28 producer who is paid for the sale, solicitation, or negotiation of
29 the annuity or other contract:

30 (a) The producer shall be duly licensed in this state as a broker
31 or agent if either of the following is true:

32 (1) The consumer resides in this state.

33 (2) The claim settlement negotiation takes place in this state,
34 and the consumer is present at the negotiation.

35 (b) The producer shall not be released from any liability
36 resulting from the sale of the annuity or other contract due to the
37 producer’s negligence or violation of a state statute pertinent to
38 the transaction, including a producer licensing statute, when the
39 consumer’s interests are affected by a matter covered by the
40 statute.

1 (c) The producer shall not be required to share commissions
2 with a producer or any other person or entity not selected by the
3 consumer, unless the consumer gives written consent to the
4 sharing arrangement after receiving full disclosure from the
5 producer selected. The consumer's consent to such a sharing
6 arrangement shall not be required as a condition of settlement.

7 (d) The producer shall not engage in any rebating or
8 commission sharing arrangement either directly or indirectly, that
9 is not authorized by the consumer pursuant to subdivision (c),
10 regardless of whether the other person or entity benefitting from
11 such an arrangement is licensed as an insurance producer.

12 10133.95. Notwithstanding any other provision of law, no
13 person shall be deemed to have constructive receipt or economic
14 benefit of any funds deposited into a designated settlement fund
15 or a qualified settlement fund, regardless of the number of
16 claimants to those funds and regardless of whether the funds
17 have been allocated among claimants.